

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | File Number EB-04-BS-067 |
| |) | |
| Sylvane Simon |) | NAL/Acct. No.200532260002 |
| Mattapan, MA |) | |
| |) | FRN 0013802681 |
| |) | |

NOTICE OF APPARENT LIABILITY FOR FORFEITURE

Released: July 26 , 2005

By the District Director, Boston Office, Northeast Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Notice of Apparent Liability for Forfeiture* (“NAL”), we find Sylvane Simon (“Mr. Simon”), apparently liable for a forfeiture in the amount of ten thousand dollars (\$10,000) for willful and repeated violation of Section 301 of the Communications Act of 1934, as amended (“Act”).¹ Specifically, we find Mr. Simon apparently liable for operating radio transmission equipment without a license on 1640 KHz in Mattapan, MA.

II. BACKGROUND

2. On June 15, 2004, agents in the Commission’s Boston Office of the Enforcement Bureau (“Boston Office”) monitored signals on 1640 KHz in Mattapan, MA and, using mobile direction-finding techniques, determined the source of the signals to be 9 Duke Street, Mattapan, MA. Based on field-strength measurements of the signal taken by the agents, the station required a Commission authorization to operate.² FCC records showed that no license had been issued for the operation of an AM broadcast station at this location.

3. Also on June 15, 2004, agents in the Boston Office observed a radio signal on 105.3 MHz in Mattapan, MA and, using mobile direction-finding techniques, determined the source of the signals to be 1333 Blue Hill Avenue, Mattapan, MA. The audio on 105.3 MHz was the same as the audio being broadcast on 1640 KHz. Based on field-strength measurement of the signal taken by the agents, the operation on 105.3 MHz required a Commission authorization.

4. On June 24, 2004, agents conducted an inspection at 1333 Blue Hill Avenue and spoke to Mr. Simon. Based on their conversation with Mr. Simon, the agents determined that Mr. Simon was

¹47 U.S.C. § 301

²Section 15.209(a) of the Commission’s rules authorizes operation of low power radio equipment without a license if the strength of the signal does not exceed the maximum signal strength at a specified distance. *See* 47 C.F.R. § 15.209(a). The measurements showed that the field strength of the station’s signal exceeded the permissible level for a non-licensed low-power radio transmitter.

operating a studio at 1333 Blue Hill Avenue and transmitting the audio on 105.3 MHz to the AM transmitter located at 9 Duke Street. The agents orally warned Mr. Simon of the consequences of unlicensed operation of a broadcast station. Mr. Simon stated to the FCC agents that the station would remain off the air until he received an authorization from the FCC to operate.³ On June 29, 2004, the Boston Office issued a Notice of Unlicensed Operation by certified and first class mail.

5. On August 25, 2004 and October 7, 2004, FCC agents again detected signals on 1640 KHz and, using mobile direction-finding techniques, determined the source of the signals to be 9 Duke Street, Mattapan, MA. Based on field-strength measurements of the signal taken by the agents on August 24, 2004 and October 7, 2004, the station required a Commission authorization to operate. During the inspection conducted on October 7, 2004, the agents observed an antenna affixed to the top of a garage in the rear of 9 Duke Street. The Boston Office mailed another Notice of Unlicensed Operation to Mr. Simon by certified and first class mail on October 7, 2004.

6. On October 25, 2004, Mr. Simon responded to the October 7, 2004 Notice of Unlicensed Operation. Mr. Simon reported that modifications were made to the station in order to bring it into compliance with the Commission's Part 15 rules for low power stations.

7. On October 28, 2004, FCC agents again detected signals on 1640 KHz and, using mobile direction-finding techniques, determined the source of the signals to be 9 Duke Street, Mattapan, MA. Based on field-strength measurements of the signal taken by the agents on October 28, 2004, the station required a Commission authorization to operate.

III. DISCUSSION

8. Section 301 of the Act states that no person shall use or operate any apparatus for the transmission of energy or communications or signals by radio within the United States except under and in accordance with the Act and with a license issued by the Commission.⁴ Agents from the Boston Office positively identified the source of an AM signal transmitting on 1640 KHz on June 15, 2004, August 25, 2004, October 7, 2004, and October 28, 2004 as 9 Duke Street, Mattapan, MA. On those dates, agents also conducted field strength measurements of the signal and determined the station exceeded the legal limit for an allowable low power non-licensed transmitter. A license therefore was required for operation of this station. The FCC's records show that no license has been issued for an AM station on 1640 KHz in Mattapan, MA. Mr. Simon has been warned orally and in writing of the possible penalties for unlicensed operation of the station. Moreover, in response to the October 7, 2004 Notice of Unlicensed Operation, Mr. Simon indicated that he would bring the station into compliance with the Commission's Part 15 rules. He nevertheless continued to operate the station without a license and without coming into compliance with the Part 15 rules.

³Since the June 24, 2004 inspection, FCC agents have not detected a signal on the frequency 105.3 MHz in Mattapan, MA.

⁴47 U.S.C. § 301.

9. Based on the evidence before us, we find that Mr. Simon willfully⁵ and repeatedly⁶ violated Section 301 of the Act by operating an AM radio transmitter without a license.

10. Pursuant to Section 1.80(b)(4) of the Commission's Rules ("Rules"),⁷ the base forfeiture amount for operation without an instrument of authorization is \$10,000. In assessing the monetary forfeiture amount, we must also take into account the statutory factors set forth in Section 503(b)(2)(D) of the Act, which include the nature, circumstances, extent, and gravity of the violation, and with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁸ Considering the entire record and applying the factors listed above, this case warrants a \$10,000 forfeiture.

IV. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Act,⁹ and Sections 0.111, 0.311 and 1.80 of the Rules,¹⁰ Sylvane Simon is hereby **NOTIFIED** of this **APPARENT LIABILITY FOR A FORFEITURE** in the amount of ten thousand dollars (\$10,000) for willful violation of Section 301 of the Act by operating an unlicensed transmitter on 1640 KHz.

12. **IT IS FURTHER ORDERED** that, pursuant to Section 1.80 of the Rules, within thirty (30) days of the release date of this *NAL*, Sylvane Simon **SHALL PAY** the full amount of the proposed forfeiture or **SHALL FILE** a written statement seeking reduction or cancellation of the proposed forfeiture.

13. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the *NAL*/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

14. The response, if any, must be mailed to Federal Communications Commission,

⁵Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387-88 (1991).

⁶ Section 312(f)(2) of the Act, U.S.C. § 312(f)(2), which applies equally to Section 503(b) of the Act, provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day."

⁷ 47 C.F.R. § 1.80(b)(4).

⁸ 47 U.S.C. § 503(b)(2)(D).

⁹ 47 U.S.C. § 503(b).

¹⁰ 47 U.S.C. §§ 0.111, 0.311, 1.80.

Enforcement Bureau, Northeast Region, Boston Office, 1 Batterymarch Park, Quincy, MA 02169-7448 within thirty (30) days from the release date of this Notice of Apparent Liability for Forfeiture and must include the NAL/Acct. No. referenced in the caption.

15. The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the petitioner submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices (“GAAP”); or (3) some other reliable and objective documentation that accurately reflects the petitioner’s current financial status. Any claim of inability to pay must specifically identify the basis for the claim by reference to the financial documentation submitted.

16. **IT IS FURTHER ORDERED** that a copy of this *NAL* shall be sent by regular mail and Certified Mail Return Receipt Requested to Sylvane Simon at his address of record.

FEDERAL COMMUNICATIONS COMMISSION

Dennis V. Loria
District Director
Boston Office
Northeastern Region
Enforcement Bureau